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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: July 16, 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

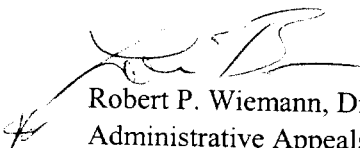
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a non-profit provider of social and human services. It seeks to employ the beneficiary permanently in the United States as a literacy coordinator. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director denied the petition because he concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought because the beneficiary did not a bachelor's degree as required by the proffered position on the Form ETA 750A.

On appeal, the petitioner's counsel contends that the beneficiary's credentials are sufficient to meet the requirements of the labor certification and submits additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

Counsel asserts that the petitioner is seeking classification under Section 203(b)(3)(A)(i) of the Act. Thus, the petitioner is obligated to show that the beneficiary has a minimum of two years training or experience that qualifies the beneficiary for the proffered position. In addition to the experience requirement delineated under the statute for the third preference category being sought, the petitioner must also show that the beneficiary meets all requirements of the proffered position as they are set forth on the Form ETA 750A. This will be further discussed below.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158,160 (Act. Reg. Comm. 1977). The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. § 204.5(d). In this case, that date is March 30, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of literacy coordinator. In the instant case, item 14 describes the requirements of the proffered position as follows:

14. Education
Grade School
High School

College	4*
College Degree Required	B.A. or equivalent
Major Field of Study	
Experience	
Job Offered/Yrs	2
15. Other Special Requirements	Must have 2 years of experience as a Literacy Coordinator. Must be bi-lingual (Spanish/English). *B.A. or equivalent required.

The beneficiary set forth his credentials on Form ETA-750B. On Part 11, eliciting information of the names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), he indicated that he received an English Teacher Certificate from the Foreign Languages Teaching Center (CELE), which he attended from June 1992 through June 1993. Additionally, he indicates that he received a degree in graphic design at the National Autonomous University of Mexico, which he attended from September 1983 through September 1985, and obtained another English Teacher Certificate in English as a Second Language at the Mexican American Institute of Cultural Relations, which he attended from February 1985 through February 1986.

Additionally, the beneficiary set forth his work experience on Part 15, in which he shows experience as a literacy coordinator at [REDACTED] a language school in Mexico City, from January 1991 through December 1994; as an "ISO 2000 Assistant" for a filter manufacturer called Fleetguard Mexico from December 1993 through November 1995; and as a literacy coordinator for the petitioner since September 1996. He provides no further information concerning his background on this form, which is signed by the beneficiary under a declaration under penalty of perjury that the information was true and correct.

As proof of the beneficiary's credentials, the petitioner initially submitted translated copies of certificates and experience letters, and a copy of a credential evaluation report written by the Foundation for International Studies, Inc., which found the beneficiary's credentials to be equivalent to:

one year of university-level credit in applied linguistics from an accredited college or university in the United States and has, as a result of his educational background, professional training and employment experiences (3 years of experience = 1 years of university-level credit), an educational background the equivalent of an individual with a bachelor's degree in education with an emphasis in teaching English as a second language from an accredited college or university in the United States.

It is noted that the *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides:

[CIS] uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

Because the evidence was insufficient, the director requested additional evidence on July 25, 2002, specifically noting that the petitioner's requirements for the proffered position, as set forth on its labor certification application, requires evidence that the beneficiary completed four years of education leading to a bachelor's degree or the equivalent before the priority date. The director stated that "the Form ETA-750 does not indicate that such an evaluation is acceptable."

The petitioner's response to the director's request for evidence included counsel's handwritten response on the face of the request stating the following: "This is a false assertion. Please find enclosed 750A. Part 15 * BA or equivalent required. Also part 14 750A or equivalent. Page 34. ALSO SEE ATTACHED DENIAL OF I-140, WE MODIFIED LC TO ALLOW "4 years COLLEGE DEGREE OR EQUIVALENT." Counsel references specific pages of attached submissions and states "THE * next to the 4 years of college modifies [part 14] it on part 15 to allow 'equivalent to 4 years of college.' See part A form [sic]."

On the face of a copy of the Form ETA 750, counsel indicates with highlighted handwriting that the "*" in Box 15 modifies the 4 years of college "to allow 'equivalent to 4 years of college.'" He also submits a decision denying a past visa petition by the same petitioner for the same beneficiary issued in December 1999. That decision, issued by the Nebraska Service Center director, denied the visa petition for finding that the beneficiary was not qualified for the proffered position. Counsel also submitted a copy of the accompanying ETA 750A for the previously denied case that indicated that a college degree was required. The director's decision stated that "[t]here is no provision for acceptance of the equivalent of a bachelor's degree unless the ETA-750 specifies "degree 'or equivalent'" in part 14 and 15." Enclosed was also a copy of the previously submitted credential evaluation issued by the Foundation for International Studies.

Because the evidence was still insufficient to issue a decision, the director requested additional evidence again on November 27, 2002. The second request for evidence requested evidence of the beneficiary's employment experiences from 1984 to 1987 and 1991 to 1996. Counsel provided corroborating evidence in response.

The director denied the petition on March 20, 2003, citing 8 C.F.R. § 204.5(l)(3)(ii)(C) for the premise that work experience cannot be accepted in lieu of formal education for preference petitions filed under Section 203(b)(3)(A)(ii) of the Act.

On appeal, counsel asserts that CIS erred in analyzing the petition under the professional category, 203(b)(3)(A)(ii) of the Act, instead of the skilled worker category, 203(b)(3)(A)(iii) of the Act. Thus, counsel states that the director's reliance upon the language in 8 C.F.R. § 204.5(l)(3)(ii)(C) was incorrect since the "skilled worker" regulations at 8 C.F.R. 204.5(l)(3) do not specify what is equivalent to a bachelor's degree.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C), regarding evidentiary requirements for professionals, states the following:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the

baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), regarding evidentiary requirements for skilled workers, states the following:

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Thus, at the outset, we find that the regulations for skilled workers do permit CIS to evaluate whether the beneficiary meets the requirements of the labor certification, even if those requirements include a bachelor's degree or equivalent. For petitioners seeking to qualify a beneficiary for the third preference skilled worker category, the petitioner must produce evidence that the beneficiary meets the "educational, training or experience, and any other requirements of the individual labor certification" as clearly directed by the plain meaning of the regulatory provision. Thus, the petitioner is indeed obliged to prove that the beneficiary has the equivalent of four years of college leading to a baccalaureate or foreign equivalent degree.

Counsel additionally asserts that the director's language in the 1999 denial of the petitioner's first petition filed on behalf of the beneficiary led to the petitioner to file a new labor certification application modifying the educational requirement to state "or the equivalent." Counsel also states that the petitioner proved the beneficiary's qualifications through credential evaluations issued by institutions whose evaluations are typically accepted in the H-1B nonimmigrant visa context. Counsel provides a new credential evaluation on appeal.

The new credential evaluation submitted on appeal is written by [REDACTED] Chair and Professor of English, Pacific Lutheran University, who stated that the beneficiary's "years of formal education combined with the requisite years of professional training and employment experience add up to the equivalent of a bachelor's degree in education with an emphasis in teaching English as a second language from an accredited college or university in the United States." Thus, the new credential evaluation makes essentially the same equivalency determination as the previously submitted credential evaluation as they both rely upon a combination of the beneficiary's education, training, and employment experience, instead of education alone.

Even if the AAO were to consider the new credential evaluation on appeal, however, the petitioner has not established that the beneficiary is qualified for the proffered position. In this case, the labor certification clearly indicates that the equivalent of a U.S. bachelor's degree must be a foreign equivalent degree, not a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. A U.S. baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year bachelor of science degree from India as the equivalent of a United States baccalaureate degree. *Id.* at 245.

If supported by a proper credentials evaluation, a four-year baccalaureate degree from Mexico could reasonably be considered to be a "foreign equivalent degree" to a United States bachelor's degree. Here, the record reflects that the beneficiary's formal education consists of far less than a four-year curriculum. The evaluation submitted with the initial evidence in this proceeding suggesting that the beneficiary's certificates from language and teacher training schools and his subsequent employment experience should be considered as the equivalent of a baccalaureate degree is not accepted as competent and probative evidence that the beneficiary holds a foreign equivalent degree to a United States bachelor's degree because it includes employment experience in the evaluation. Unlike the temporary non-immigrant H-1B visa category for which promulgated regulations at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) permits equivalency evaluations that may include a combination of employment experience and education, no analogous regulatory provision exists for permanent immigrant third preference visa petitions.

As stated in 8 C.F.R. § 204.5(l)(3)(ii)(B), to qualify as a skilled worker, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a bachelor's degree, or an equivalent foreign degree. The petitioner simply cannot qualify the beneficiary as a skilled worker with its additional requirement on the Form ETA-750 of an equivalent foreign degree to a U.S. bachelor's degree.

Based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses the equivalent of a United States bachelor's degree as required by the terms of the labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.